

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TONI CAMP,

Plaintiff,

vs.

Cause No.

CITY OF SANTA FE
AND STATE OF NEW MEXICO,

Defendants.

NOTICE OF REMOVAL

Please take notice that pursuant to 28 U.S.C. § 1331, 1441(C), and 1446, Defendant City of Santa Fe, hereby removes this action from the First Judicial District Court for Santa Fe County, New Mexico, to the United States District Court for the District of New Mexico. In support of this removal, the City of Santa Fe states as follows:

I.
PROCEDURAL BACKGROUND

On October 1, 2019, Plaintiff, Tony Camp, filed her Complaint for Personal Injury and Discrimination in the State of New Mexico, Santa Fe County, under Cause No.: D-101-CV-2019-02619. (“State Court action”). In accordance with 28 U.S.C. § 1446(A), a copy of the Complaint and all process, pleadings, and Orders are attached hereto as Exhibit “A.” In addition, a copy of the Register of Actions is attached hereto as Exhibit “B.”¹

Plaintiff’s Complaint was filed against the following Defendants: (1) The City of Santa Fe and (2) The State of New Mexico. (See Complaint attached as Exhibit A-1).

¹ Within 28 days after the filing of this Notice of Removal, the City of Santa Fe will file copies of all records and proceedings from the state court action in accordance with D.N.M. LR-CIV.81.

In the Complaint, Plaintiff claims she has a physical impairment which substantially limits one or more of her major life activities, specifically the condition known as multiple sclerosis. Further, she alleges that on October 14, 2017, “while traveling by wheelchair as a necessary consequence of her disability,” the Plaintiff was injured while attempting to cross a pedestrian crosswalk in the City of Santa Fe. She alleges that while attempting “to access the sidewalk via the ramp at [the intersection of Galisteo Avenue and San Francisco Street], her wheelchair tipped over backwards causing her head to strike the pavement.” (Complaint at ¶ 4). The Complaint further alleges that the sidewalk, crosswalk, and ramp were unreasonably dangerous for her as a person with a physical impairment confined to a wheelchair, that Defendant provided no warning or signage of this condition and, as a result, she sustained bodily injury as a result of “Defendants negligence, wrongful conduct and breach of duty for which they are not immune.”

Plaintiff’s Complaint is grounded, apparently, not only in common law negligence but for violations by the Defendants “for their violations with the Americans With Disabilities Act (“the ADA, 42. U.S.C. § 12101 *et seq.*”). (Complaint at ¶ 15).

II. BASIS FOR REMOVAL

This case is being removed under 28 U.S.C. § 1331 (which provides that “the district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”). Further, this case is being removed pursuant to 28 U.S.C. §§ 1441(C) and 1446.

The relief sought by Plaintiff, for damages due to bodily injury, and as a result of violations by the City of Santa Fe of its duties under the federal Americans With Disabilities Act, creates federal question jurisdiction. Because the State claims are based on negligence the liability of the City of Santa Fe under the ADA is actually disputed and creates a substantial question of federal

law, the resolution of which is necessary to a resolution of the case. The State claims of common law negligence as well as the claims pursuant to the ADA derive from a common nucleus of operative fact and, as a result, the Court should exercise supplemental jurisdiction or pendent jurisdiction over such State law claims.

III.

COMPLIANCE WITH REMOVAL STATUTES

A. Proper Venue.

The United States District Court for the District of New Mexico encompasses Santa Fe County (the County in which Plaintiff filed the State court action). See 28 U.S.C. § 124. Therefore, this case is properly removed to this Court under 28 U.S.C. § 1441(A).

B. Timeliness of Removal.

The City of Santa Fe was served with a copy of the Complaint on November 7, 2019. (See Notice of Service attached as Exhibit “C”). Because this Notice of Removal was filed within 30 days after service of the Complaint on the City of Santa Fe, this removal is timely under 28 U.S.C. § 1446(B). No previous application has been made for the relief requested herein.

C. Notice.

Pursuant to 28 U.S.C. § 1446(D), prompt written notice of the filing of this Notice of Removal is being given to Plaintiff and the State of New Mexico and a copy of this Notice of Removal is being filed with the Clerk for the First Judicial District Court of Santa Fe County, New Mexico.

IV.

NON-WAIVER OF DEFENSES

In removing this case to federal court, the City of Santa Fe has not waived any available defenses to the allegations asserted against it in the Complaint and, unless otherwise stated in the

City of Santa Fe's pleadings, this Defendant has not admitted to any of the allegations set forth in the Complaint. The City of Santa Fe expressly reserves the right to assert all available defenses to each allegation in the Complaint.

V.
CONCLUSION AND PRAYER

As set forth above, all of the prerequisites for removal have been satisfied, and removal is proper pursuant to 28 U.S.C. §§ 1331, 1441(C), and 1446. Accordingly, the City of Santa Fe respectfully requests that this lawsuit be removed to the United States District Court for the District of New Mexico.

Respectfully submitted

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CERTIFICATE OF MAILING

The undersigned hereby certifies he transmitted a true and accurate copy of the foregoing to:

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on this 6th day of December, 2019.

/s/ Scott P. Hatcher
Scott P. Hatcher